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FEB 28 2002

MARY E. D'ANDREA, CLERK
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

VICTOR R. COTTON,

Plaintiff,

vs.

THREE RIVERS HEALTH PLANS,
INC., a corporation,

Defendant.

No. 1:CV-00-1709

Judge Kane

DEFENDANT'S BRIEF IN OPPOSITION
TO PLAINTIFF'S MOTION IN LIMINE

Defendant Three Rivers Health Plans, Inc. ("Three Rivers"), hereby opposes Plaintiff's motion *in limine*. Dr. Cotton's motion is improper in at least two respects.


First, the Court directed that *in limine* motions be filed in this case no later than January 4, 2002. Three Rivers complied. Dr. Cotton made no filing. Dr. Cotton's pattern of ignoring deadlines imposed by the Court and the Federal Rules of Civil Procedure continues.

Second, Dr. Cotton's counsel has certified to the Court (in the certificate of non-concurrence) that: ". . . on February 27, 2002, I sought the concurrence of Defendant's counsel in the foregoing motion and that he declined to so concur." That certification is false. Neither of Three Rivers' lawyers received any communication from Mr. Haggerty at any time on February 27, 2002 (or at any other time) about Plaintiff's motion *in limine*. Despite the fact that Plaintiff's counsel signed that certification subject to the requirements of Fed. R. Civ. P. 11, what he has represented to the Court is absolutely untrue.

Had Mr. Haggerty sought concurrence, much of his motion would have been unnecessary. Three Rivers' counsel would have explained that, *if* Three Rivers uses those affidavits at trial, they would be offered only for purposes of impeachment. Rule 26(a)(1)(B) makes clear that documents used solely for impeachment need not be disclosed. Dr. Cotton's motion *in limine* is unnecessary, a point his counsel would have learned had he actually sought concurrence. The Court should deny the motion.¹

KIRKPATRICK & LOCKHART LLP

February 28, 2002


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Counsel for Defendant

¹ Three Rivers would also ask that the Court inquire of Plaintiff's counsel why he signed a false certification.

CERTIFICATE OF SERVICE

I hereby certify that, February 28, 2002, I served a true and correct copy of the foregoing brief on the following by Telecopier and first-class United States Mail, postage-prepaid:

William E. Haggerty, Esq.
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